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[REDACTED]
DEC 21 1990

CERTIFIED MAIL

Dear Applicant:

We have completed our review of your application for recognition of exemption under section 501(c)(3) of the Internal Revenue Code.

The evidence submitted indicates that you were incorporated [REDACTED], under the laws of the State of [REDACTED] to provide for the maintenance, preservation, and control of the elements within a certain tract of property described in the exhibits of a certain Master Deed entitled "[REDACTED]" recorded or intended to be recorded in the Office of the Register of [REDACTED] County, and to promote the health, safety and welfare of the residents within the above described property.

The Master Deed to this development states that the owners of this property are [REDACTED] and [REDACTED] and the sponsors intend to create [REDACTED] residential dwelling units with certain roads, driveways and other improvements.

The primary activity of your organization is to maintain the land and property. The work involved in this maintenance is performed by each of the owners of the above stated property.

Income to your organization comes primarily from assessments from members. Expenses are for electricity, water, sewage and gas.

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable, religious, scientific and educational purposes, no part of the net earnings of which benefit any private shareholder or individual.

Income Tax Regulations section 1.501(c)(3)-1(a)(1) provide that, to be exempt, an organization described in section 501(c)(3) must be both organized and operated exclusively for one or more of the purposes described in this section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

[REDACTED]

Regulations section 1.501(c)(3)-1(b)(1) specifies that an organization is organized exclusively for one or more exempt purposes only if its Articles of Incorporation limit the purposes of such organization to one or more exempt purposes.

Regulations section 1.501(c)(3)-1(c)(1) stipulates that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish any of the activities specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Regulations section 1.501(c)(3)-1(d)(1)(ii) specifies that an organization is not organized or operated exclusively for an exempt purpose unless it serves public rather than private interests.

Revenue Ruling 74-17 concerns an association formed by unit owners of a condominium housing project which was operated to provide for the management, maintenance and care of the common areas of the project. Because the essential structure of a condominium association involves ownership in common by all unit owners of common areas and the maintenance and care of private property, the tax court held that the organization could not be recognized as tax exempt because the activities of the association constituted providing private benefit for the unit owners.

Our review of the application submitted under section 501(c)(3) of the Code indicates that your organization does not meet either the organizational or operational tests required for exemption under this section. Your articles of incorporation do not limit your purposes exclusively to religious, charitable or other stated purposes and they fail to prohibit that any part of the net earnings of the organization will benefit any private shareholder or individual. Your articles of incorporation also do not provide for the distribution of your assets to a qualified entity in the event you dissolve.

Your organization also fails the operational test of section 501(c)(3) since your primary activity of maintaining common grounds surrounding your condominium association is not an activity that is exclusively religious, charitable, educational or scientific. Therefore, based on the information submitted, we have concluded that you are not entitled to exempt status under section 501(c)(3).

Contributions to your organization are not deductible under section 170 of the Code.

[REDACTED]

Since your organization is not entitled to tax exempt status under section 501(c)(3), it is a taxable entity and is required to file federal income tax returns on Form 1120.

Our review of the activities of your organization and other information submitted indicates that your purposes are similar to those of a condominium association. Under section 528 of the Internal Revenue Code organizations that perform activities similar to your activities are treated as Homeowners Associations under the special provision of this section. An organization that qualifies as a condominium association is not required to file an application for tax exempt status, but must file federal income tax returns on Form 1120H. We are enclosing some general information on an organization's responsibilities under section 528 for your information.

If you do not accept our findings, we recommend that you request a conference with a member of our Regional Office of Appeals. Your request for a conference should include a written appeal giving the facts, laws and any other information to support your position as explained in the enclosed Publication 892. You will be contacted to arrange a date for a conference. The conference may be held at the Regional Office, or if you request, at any mutually convenient district office. If we do not hear from you within 30 days from the date of this letter, this determination will become final and a copy of this letter will be sent to the appropriate state officials in accordance with section 6104(c) of the Internal Revenue Code.

If you do not protest this proposed determination under 501(c)(3) in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the code states, in part, that "A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted all administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,

[REDACTED]

[REDACTED]

District Director

Enclosure: Publication 892
Publication 588

cc: State Attorney General [REDACTED]